

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

**LILY ROBOTICS, INC.,**

Debtor.<sup>1</sup>

Chapter 11

Case No. 17-10426 (KJC)

**Re: Docket No. 8**

**INTERIM ORDER (I) AUTHORIZING USE OF  
CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION, AND  
(III) GRANTING RELATED RELIEF**

Upon consideration of the Motion,<sup>2</sup> the above-captioned debtor and debtor-in-possession requesting this Court's authorization to use the cash collateral of Spark Capital IV, L.P., as successor in interest to SVB Financial Group (the "Prepetition Secured Lender"), pursuant to 11 U.S.C. § 363(c)(2), Fed. R. Bankr. P. 4001 and Local Rule 4001-2, on an interim basis and pending a final hearing on the Motion pursuant to the four-week budget attached hereto as **Exhibit 1** ("Budget"); and notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the Motion; and upon consideration of the First Day Declaration, the record of the hearing and all proceedings had before the Court; and the Court having found and determined that (i) the relief sought in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties in interest, (ii) the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm, and (iii) that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been

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<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 8604. The Debtor's headquarters and mailing address is 374 Harriet Street, San Francisco, California, 94103.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

**THE COURT HEREBY FINDS THAT:**

A. On February 27, 2017 (the "Petition Date"), Debtor filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code. Debtor is administering this chapter 11 case as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. The Court has jurisdiction over the Case and this proceeding under 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. Determination of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2), and the Court may enter an order consistent with Article III of the United States Constitution. Venue over this Motion is proper under 28 U.S.C. §§ 1408 and 1409(a).

C. No Committee has been appointed in the Case.

D. The Debtor admits that as of the Petition Date, (1) it is truly and justly indebted and liable to the Prepetition Secured Lender pursuant to the Loan and Security Agreement, by and among the Prepetition Secured Lender and the Debtor, dated as of December 14, 2015, in the original principal amount of \$4,000,000, (2) as of the Petition Date, there is approximately \$3,777,777.78 in principal and interest outstanding (the "Prepetition Debt") under the Loan and Security Agreement due and owing absolutely with no portion subject to avoidance, recharacterization, recovery, attack, offset, counterclaim, defense, or claim of any kind pursuant to the Bankruptcy Code or other applicable law, and (3) the Prepetition Debt is validly secured with a first priority lien on substantially all of the assets of the Debtor, except for intellectual

property but including the proceeds of intellectual property (the “Prepetition Collateral”) as more fully described in Schedule B to the Loan and Security Agreement. The Loan was scheduled to mature in November of 2019.

E. The Debtor admits that all cash and cash equivalents of the Debtor are asserted by the Prepetition Secured Lender as Prepetition Collateral or proceeds thereof. The Debtor acknowledges that these funds constitute the “cash collateral” of the Prepetition Secured Lender within the meaning of 11 U.S.C. § 363(a) (the “Cash Collateral”).

F. The Prepetition Secured Lender is entitled to adequate protection as set forth herein pursuant to sections 361 and 363 of the Bankruptcy Code for any decrease in the value of its interests in the Prepetition Collateral from and after the Petition Date.

G. The Debtor has requested that the Prepetition Secured Lender consent to the Debtor’s use of the Cash Collateral to provide funds to effect a sale of assets and allow the Debtor to execute on its plan to return money to customers. The Prepetition Secured Lender affirmatively consents to the use of Cash Collateral pursuant to the terms of this Order.

H. Subject to the terms and conditions set forth in this Order, the Prepetition Secured Lender agrees to consent to the entry of this Order. No finding of fact contained in this Order shall or shall be construed to waive, impair, limit, or prejudice in any way the Prepetition Secured Lender’s right to contest or object to any further or other use of the Cash Collateral by the Debtor.

I. The terms of this Order and the use of Cash Collateral have been negotiated extensively at arm’s length and in good faith between the Debtor and the Prepetition Secured Lender.

J. Under the circumstances of this Case, this Order is a fair and reasonable response to Debtor's request for the Prepetition Secured Lender's consent to the use of Cash Collateral, and the entry of this Order is in the best interest of Debtor's estate and its creditors. The Debtor has an immediate and critical need to use the Cash Collateral on the terms set forth herein in order for the Debtor to continue its efforts to preserve assets in anticipation of a sale, institute a process to refund customers, and maximize value for its estate and creditors.

K. The Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2). Unless the interim relief set forth in this Order is granted immediately, the Debtor's estate and business will be immediately and irreparably harmed. In particular, the Debtor requires immediate use of the Cash Collateral to, among other things, preserve assets in preparation of a sale and pay basic expenses, such as payroll, professionals, and utilities. The use of the Cash Collateral, in accordance with this Order, is therefore in the best interest of the Debtor's estate, its creditors, and all parties in interest.

L. The notice provided by Debtor of the Motion, the hearing on the Motion, and the entry of this Order satisfy the requirements of Fed. R. Bankr. P. 2002, 4001(b) and (d), and 9014, Local Rule 9013-1(m), and sections 102(1) and 363 of the Bankruptcy Code and were otherwise sufficient and appropriate under the circumstances.

M. This Order constitutes findings of fact and conclusions of law under Fed. R. Bankr. P. 7052 and will take effect and be fully enforceable as of the Petition Date.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is hereby granted on an interim basis, subject to the terms and conditions set forth in this Order.

2. Through the earlier to occur of (a) five days following receipt (via email, facsimile, or courier) by the Debtor, Debtor's counsel, the Office of the United States Trustee, and counsel to any official committee appointed in the case of a notice of the occurrence of an "Event of Default" (as defined below) and such Event of Default remains uncured and the Prepetition Secured Lender is terminating the use of Cash Collateral; (b) entry of an order reasonably satisfactory to the Prepetition Secured Lender approving the motion filed by the Debtor seeking entry of interim and final orders authorizing the Debtor to obtain postpetition financing and use Cash Collateral and other related relief (the "DIP Financing Motion") on an interim basis, and (c) on March 31, 2017 (the "Termination Date"), the Debtor is authorized to use Cash Collateral in accordance with the Budget, with a permitted variance described in Paragraph 3.

3. As adequate protection for any use or diminution in the value of the Prepetition Secured Lender's respective interest in the Prepetition Collateral (including, without limitation, the Cash Collateral), the Debtor (i) will comply with the Budget and shall not make any disbursements other than those set forth in the Budget, subject to a weekly variance not to exceed 15% of the budgeted amounts of total cash disbursements for such week by category (including, but not limited to, Debtor's Counsel, Debtor's advisors, and Committee counsel) and in the aggregate; and (ii) will deliver to the Prepetition Secured Lender, on the first business day of each week, a weekly variance report setting forth Budget-to-actual comparisons for the immediately prior week. The Budget may be modified with the prior written consent of the Prepetition Secured Lender, without further order of the Court, or upon order of the Court as necessary. Each modified budget shall be filed with the Court.

4. As further adequate protection of the Prepetition Secured Lender's interest, the Debtor will not grant a lien on any of its assets, except as provided in the DIP Financing Motion.

5. The Prepetition Secured Lender reserves the right to file with the Court a motion to seek additional adequate protection of its interest.

6. In connection with the sale or other disposition, whether under Bankruptcy Code section 363 or section 1129 or otherwise, of all or any portion of the Prepetition Collateral in which the Prepetition Secured Lender has an interest, pursuant to section 363(k) of the Bankruptcy Code, the Prepetition Secured Lender shall have the right to use the Prepetition Debt or any part thereof to credit bid with respect to any bulk or piecemeal sale of all or any portion of the Prepetition Collateral.

7. Unless otherwise ordered by the Court or subsequently extended by written agreement of the Debtor and the Prepetition Secured Lender, the Debtor's authority to use the Cash Collateral pursuant to this Order shall automatically terminate on the Termination Date, without further action by the Prepetition Secured Lender. On the Termination Date, the Prepetition Secured Lender and Debtor will be entitled to apply to this Court for all appropriate relief, upon such notice as may be appropriate under the circumstances; provided, however, that (1) the obligations of the Debtor and the rights of the Prepetition Secured Lender with respect to all transactions which have occurred prior to the Termination Date shall remain unimpaired and unaffected; and (2) the Debtor and the Prepetition Secured Lender shall retain all of their respective rights and remedies under the Bankruptcy Code, including, without limitation, the Debtor's right to request the continued use of Cash Collateral and the Prepetition Secured Lender's respective rights to oppose the Debtor's further use of Cash Collateral and to move for relief from the automatic stay.

8. For purposes of this Order, an “Event of Default” shall mean:

- (a) The violation by the Debtor of any terms of the Interim Order;
- (b) The failure of the Debtor to file a motion seeking this Court’s approval of procedures to effectuate the return of its customer deposits by March 17, 2017;
- (c) The entry of an order converting the Case to a case under chapter 7 of the Bankruptcy Code or terminating the authority of the Debtor to operate its business; and
- (d) The appointment of a trustee in this Case.

9. Carve Out.

(a) Notwithstanding anything to the contrary, the liens on the Prepetition Collateral will be subject to the right of payment of the following expenses (collectively, the “Carve Out”):

- (i) to the extent allowed at any time by the Court, but subject in all respects to the aggregate amounts set forth in the current Budget attached hereto, all accrued and unpaid fees, disbursements, costs, and expenses incurred by professionals or professional firms retained by the Debtor (“Debtor Case Professionals”) or retained by a Committee (as defined in the Motion), if any (the “Committee Case Professionals” and, collectively with the Debtor Case Professionals, the “Case Professionals”), through the date of service by the Prepetition Secured Lender, of a written notice delivered by the Prepetition Secured Lender to the Debtor, its counsel, the United States Trustee, and lead counsel to any Committee, which notice may be delivered at any time following the occurrence of any Event of Default (the “Carve Out Trigger Notice”), up to and as limited by the respective approved amounts for each Case Professional or category of Case Professional through the date of service of said Carve Out

Trigger Notice, in each case as set forth in the Budget (including partial amounts for any Carve Out Trigger Notice given other than at the end of a week, and after giving effect to all carryforwards and carrybacks from prior or subsequent favorable Budget variances), *less* the amount of prepetition retainers received by such Case Professionals and not previously applied to fees and expenses, other than the retainer held by the Debtor's financial advisor, Goldin Associates LLC ("Goldin"); and

(ii) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code, plus interest at the statutory rate.

(b) Carve Out Terms. The Carve Out shall not exceed, in an aggregate amount, \$125,000.00 for the Debtor Case Professionals and \$25,000.00 for Committee Case Professionals (the aggregate of (a)(i) and (b) being defined as the "Carve Out Cap") less the amount of prepetition retainers received by such Case Professionals, other than the retainer held by Goldin, and not applied to the fees, disbursements, costs, and expenses set forth in clause (b) above. The Carve Out Cap shall be reduced on a dollar-for-dollar basis by any payments of fees or expenses of the Debtor Case Professionals or Committee Case Professionals, respectively, made after delivery of the Carve Out Trigger Notice in respect of fees and expenses incurred after delivery of the Carve Out Trigger Notice.

(c) Carve Out Usage. No portion of the Carve Out and no Prepetition Collateral (or proceeds thereof) may be used to pay any fees or expenses incurred by any entity, including the Debtor, any Committee or the Case Professionals, in connection with claims or causes of action adverse to the Prepetition Secured Lender's interest in the Prepetition Collateral,



including (1) preventing, hindering, or delaying the Prepetition Secured Lender's enforcement or realization upon any of the Prepetition Collateral once a Carve Out Trigger Notice has been received; (2) using or seeking to use Cash Collateral or incurring indebtedness in violation of the terms hereof, or selling any Prepetition Collateral without the consent of the Prepetition Secured Lender (unless sale(s) of Prepetition Collateral is less than \$20,000 in the aggregate); or (3) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of the Prepetition Debt or any liens or security interests with respect thereto or any other rights or interest of the Prepetition Secured Lender, or in asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the Prepetition Secured Lender (any such claim, a "Challenge"); provided, however, that up to \$25,000 of the Carve Out may be used to pay fees and expenses incurred by the Committee Case Professionals in connection with the investigation of the Loan and Security Agreement and the liens on and security interests in the Prepetition Collateral and in connection with negotiation, preparation, and entry of this Order or any amendment hereto consented to by the Prepetition Secured Lender.

(d) Each of the provisions in this Paragraph 9, to the extent it allows for the use of Cash Collateral to make payment to Case Professionals, shall expire upon the Termination Date, but the accrued and unpaid fees and amounts subject to the Carve Out shall be permitted to be paid from Cash Collateral to the extent approved by the Court and consistent with the Budget, and the Prepetition Secured Lender reserves the right to object to any provisions related to the payment of administrative expenses that may be sought for any period after the Termination Date.

10. General Relief.

(a) Subject to the entry of a final order, the Prepetition Secured Lender and the Prepetition Collateral will not be subject to the doctrine of marshaling.

(b) To the extent there exists any conflict among the Motion, the Loan and Security Agreement, and the terms of this Order, this Order shall govern and control.

(c) The automatic stay under section 362 of the Bankruptcy Code is hereby modified to the extent necessary to effectuate the provisions of this Order.

(d) The Prepetition Secured Lender will not be deemed to have suspended or waived any of its rights or remedies under this Order, the Loan and Security Agreement, the Bankruptcy Code, or applicable nonbankruptcy law unless such suspension or waiver is hereafter made in writing, signed by a duly authorized officer or agent of the Prepetition Secured Lender and directed to Debtor. No failure of the Prepetition Secured Lender to require strict performance by Debtor (or by any Trustee) of any provision of this Order will waive, affect, or diminish any right of the Prepetition Secured Lender thereafter to demand strict compliance and performance therewith, and no delay on the part of the Prepetition Secured Lender in the exercise of any right or remedy under this Order, the Loan and Security Agreement, or applicable nonbankruptcy law will preclude the exercise of any right or remedy. Further, this Order does not constitute a waiver by the Prepetition Secured Lender of any of its respective rights under the Loan and Security Agreement, the Bankruptcy Code, or applicable nonbankruptcy law, including, without limitation, the Prepetition Secured Lender's right to later assert (a) that any of its interests in the Prepetition Collateral lack adequate protection within the meaning of Bankruptcy Code sections 362(d) or 363(e) or any other provision thereof or (b) a claim under section 507(b) of the Bankruptcy Code.

(e) As adequate protection and further consideration for permitting the use of Cash Collateral or in exercising any rights or remedies pursuant to this Order, the Prepetition Secured Lender shall not have any liability for any claims arising from the prepetition or postpetition activities of the Debtor and its affiliates.

(f) This Order and the findings of fact set forth in Paragraphs A–M hereof is binding on all parties in interest in the Case and their respective successors and assigns, including, without limitation, any subsequently appointed chapter 11 or chapter 7 trustee of the Debtor (“Trustee”), except that (i) any Trustee will have the right to terminate this Order after notice and a hearing, subject to the terms and conditions of this Order and (ii) a party in interest (other than the Debtor, but including the Committee and a Trustee, if any) may commence a Challenge (x) no later than 60 days after formation of the Committee or (y) in the case of any other party in interest other than the Committee, no later than 75 days after the entry of this Order ((x) and (y) together, the “Challenge Period”) and, in either (x) or (y), this Court rules in favor of the Challenge. If a Trustee is appointed prior to the expiration of the Challenge Period, the Trustee may move for an extension of the Challenge Period, but the Prepetition Secured Lender and all other parties in interest reserve the right to object to such requested extension. If this Order does not become a final nonappealable order, if a Trustee terminates this Order, or if any of the provisions of this Order are hereafter modified, amended, vacated, or stayed by any subsequent order of this Court or any other court, such termination or subsequent order shall not affect the priority, validity, enforceability, or effectiveness of any lien, security interest, or other benefit or claim authorized hereby with respect to Cash Collateral used prior to the effective date of such termination or subsequent order. All such liens, security interests, claims, and other benefits will be governed in all respects by the original provisions of this Order.

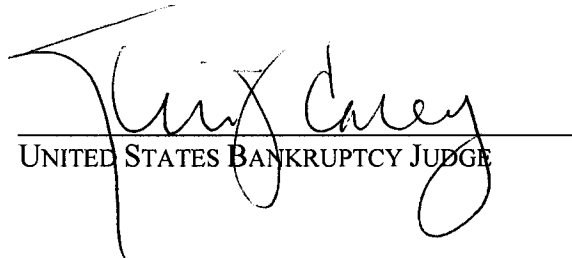
11. The Motion is hereby set for further interim hearing before this Court at 11:00 a.m. (ET) on March 27, 2017 (such date or such later date to which such hearing is adjourned or continued, the "Interim Hearing"), at which time any party in interest may present any timely filed objections to the entry of a further order containing relief substantially similar to that contained in this Order, and potentially containing additional relief requested by, but not granted to, the Prepetition Secured Lender in this Order. Notwithstanding the foregoing, the Prepetition Secured Lender may consent to an extension of the Debtor's continued use of Cash Collateral without the need for a further hearing.

12. The Debtor shall promptly serve a notice of the entry of this Order and such Interim Hearing, together with a copy of this Order, by regular mail upon (i) the Office of the United States Trustee, (ii) the creditors holding the 30 largest unsecured claims against the Debtor, (iii) counsel to the Prepetition Secured Lender, and (iv) any other party which has filed a request with this Court for notice in the Debtor's case and served such request upon the Debtor's counsel. The notice of the Interim Hearing shall state that objections to the entry of a further interim order on the Motion shall be in writing and shall be filed with the United States Bankruptcy Clerk for the District of Delaware, at 824 North Market Street, 3rd Floor, Wilmington, Delaware, 19801, no later than March 20, 2017, which objections shall be served so that the same are received on or before 4:00 p.m. (Eastern time) of such date by (a) proposed counsel to the Debtor, Orrick, Herrington & Sutcliffe LLP, Columbia Center, 1152 15th Street, N.W., Washington, D.C., 20005-1706, Attn: Doug Mintz (dmintz@orrick.com) and Orrick, Herrington & Sutcliffe LLP, 51 West 52<sup>nd</sup> Street, New York, NY, 10009, Attn: Laura Metzger and Jennifer Asher (lmetzger@orrick.com, jasher@orrick.com); (b) proposed Delaware counsel to the Debtor, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16<sup>th</sup> Floor,

Wilmington, DE, 19801, Attn: Robert J. Dehney and Andrew R. Remming (rdehney@mnat.com, aremming@mnat.com); (c) counsel to Silicon Valley Bank, c/o Riemer & Braunstein LLP, Three Center Plaza, 6<sup>th</sup> Floor, Boston, MA, 02108 (Attn: Alexander G. Rheume); (d) counsel to Spark Capital, c/o Nutter, McClennen & Fish LLP, Seaport West, 155 Seaport Boulevard, Boston, MA, 02210 (Attn: John G. Loughnane); (e) counsel for any official committee, and (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE, 19801 (Attn: Mark Kenney). Any objections by creditors or other parties in interest to any of the provisions of this Order shall be deemed waived unless filed and served in accordance with this paragraph.

13. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon entry hereof, and there shall be no stay of effectiveness of this Interim Order.

Dated: Feb 28, 2017  
Wilmington, Delaware

  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1 - Four-Week Budget**

<b>Cash Collateral Budget</b>				
<b>Week Ending</b>	<b>03/04/17</b>	<b>03/11/17</b>	<b>03/18/17</b>	<b>03/25/17</b>
<b>Professional Fees</b>				
Orrick				
Prime Clerk	\$ 25,000			
MNAT				
UCC Counsel				
UCC FA				
Goldin Associates				
Drivetrain	\$ 25,000			
<b>DIP Loan</b>				
Interest				
<b>Employee Salaries</b>				
Antoine and Henry	\$ 8,800		\$ 8,800	
<b>Temp Costs</b>				
Unified Accounting & Tax				
<b>Miscellaneous</b>				
D&O Insurance				
Office, utilities, etc	\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500
Rent				
Contingency	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
<b>Total</b>	<b>\$ 67,300</b>	<b>\$ 8,500</b>	<b>\$ 17,300</b>	<b>\$ 8,500</b>
<b>Opening Cash</b>	<b>104,458</b>	<b>\$ 37,158</b>	<b>\$ 28,658</b>	<b>\$ 11,358</b>
<b>DIP Draw</b>				
<b>Ending Cash</b>	<b>\$ 37,158</b>	<b>\$ 28,658</b>	<b>\$ 11,358</b>	<b>\$ 2,858</b>
<b>Outstanding DIP</b>				